

APPEAL NO. 042480
FILED NOVEMBER 29, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 24, 2004. The hearing officer determined that the respondent's (claimant) _____, compensable injury extends to and includes vertigo, but not an injury to the cervical and thoracic regions of her spine, and that as a result of the compensable injury the claimant had disability from September 8 through December 2, 2003, and again from December 4, 2003, through January 5, 2004. The appellant (carrier) appealed the hearing officer's determinations regarding vertigo and disability. The claimant responded, urging affirmance. The hearing officer's determinations regarding the cervical and thoracic regions of the spine have not been appealed and have become final. Section 410.169.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on _____, and that the injury accepted by the carrier was a contusion to the claimant's nose. The claimant testified that the injury occurred when she was attempting to get a DVD player down from an overhead shelf. The claimant further testified that as she was getting the DVD player down, the remote control for the DVD player slid off the box and struck her on the bridge of the nose. The claimant testified that as a result of the work-related injury, she suffered from dizziness and nausea to the extent that it impaired her activities of daily living and caused her to be unable to work for the above-mentioned periods of time. The claimant testified that she did not seek treatment from a medical doctor for her vertigo and related symptoms, however, she did seek treatment from a chiropractor.

The hearing officer concluded that the claimant did sustain an injury in the form of vertigo, and as a result of the vertigo she did have disability. The Appeals Panel has noted that where, as here, the causal connection is not a matter of general knowledge that the claimant must prove the causal connection by reasonable medical probability. Schaefer v. Texas Employers' Insurance Association, 612 S.W.2d 199 (Tex. 1980). The fact that proof of causation is difficult does not relieve a claimant of the burden of proving it. Texas Workers' Compensation Commission Appeal No. 040001, decided February 25, 2004. In the instant case, the claimant failed to provide any medical evidence regarding a diagnosis of, or causation of, vertigo from a medical provider qualified to give such an opinion. Instead, the hearing officer took it upon himself to diagnose vertigo based upon the claimant's testimony, subjective complaints, and his interpretation of *The Merck Manual*, 16th Edition. The hearing officer overstepped his bounds in the instant case. Because the claimant failed to provide any expert medical evidence to establish that she suffered from vertigo, and that if she did the vertigo was

causally related to the compensable injury, the claimant has failed to meet her burden of proof on this issue.

Regarding the issue of disability, the claimant testified that the reason she was unable to work during the claimed periods of disability was due to her vertigo and the related symptoms. Because we have determined that the claimant has failed to meet her burden of proof to establish that vertigo is part of the compensable injury, we likewise find that she has failed to establish that the accepted nose contusion caused any disability.

The hearing officer's determination that the claimant's _____, compensable injury extends to and includes vertigo, and that she had disability from September 8 through December 2, 2003, and again from December 4, 2003, through January 5, 2004, is reversed and a new decision is rendered that the claimant's _____, compensable injury does not extend to and include vertigo, and that the claimant did not have disability as a result of her _____, compensable injury.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Daniel R. Barry
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge